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UNITED STATES OF AMERICA
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12 UNITED STATES DISTRICT COURT

13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 PHILIP ALAN DRECHSLER,

18 Defendant.
19
20
21

No. CR 23-216-RGK

GOVERNMENT'S OPPOSITION TO
DEFENDANT PHILIP ALAN DRECHSLER'S
APPLICATION FOR
REVIEW/RECONSIDERATION OF ORDER
SETTING CONDITIONS OF
RELEASE/DETENTION (18 U.S.C.
§ 3142); DECLARATION OF KELLYE NG
AND EXHIBITS

(REDACTED)

22 Plaintiff United States of America, by and through its counsel
23 of record, the United States Attorney for the Central District of
24 California and Assistant United States Attorneys Bruce Riordan and
25 Kellye Ng, hereby files the Government's Opposition to Defendant
26 PHILIP ALAN DRECHSLER's Application for Review/Reconsideration of an
27 Order Setting Conditions of Detention (the "Opposition").
28 //

1 This Opposition is based upon the attached memorandum of points
2 and authorities, the declaration of AUSA Kellye Ng, the files and
3 records in this case, and such further evidence and argument as the
4 Court may permit.

5 Dated: September 5, 2023

Respectfully submitted,

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9 Assistant United States Attorney
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10 /s/
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MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

On June 6, 2023, this Court ruled that no conditions or combination of conditions would reasonably assure defendant PHILIP ALAN DRECHSLER's ("defendant") appearance as required, or the safety of any person or the community. (Dkt. 22 at 2.) Nothing in defendant's Application for Reconsideration of the Court's Order Setting Detention changes the propriety of the ruling. (Dkt. 27.)

Defendant, a 61-year-old former journalist, distributed child pornography in a secret Telegram chatroom called "The Playground Lives." On April 6, 2023, law enforcement executed a search at defendant's home. (Dkt. 1 ¶ 22.) About less than two weeks after the search--and knowing that he was under investigation for child exploitation charges--defendant grabbed his firearms, drove from Los Angeles County to Ohio, and expressed suicidal ideations. (Id. ¶ 25.) Indeed, defendant's subsequently obtained journal entries reveal how close he was to committing suicide. (See Declaration of Kellye Ng, ¶ 2, Ex. A, at USAO_000272-73, 275-77.)

Because of the defendant's danger to himself and to the community, the government filed an after-hours complaint on April 18, 2023. (Dkt. 1.) After a tense but brief standoff during which defendant was armed with a loaded gun, defendant ultimately surrendered to law enforcement at his Ohio hotel. (Ng Decl. ¶ 3, Ex. B at 1.) Defendant conveyed to the arresting officers that he had contemplated three options: commit suicide, run, or surrender. (Id.)

The Court should deny defendant's application because he fails to rebut the presumption of detention under 18 U.S.C. § 3142(e)(3), especially where defendant is presently charged under 18 U.S.C.

1 § 2252A(a) (2) (A). Moreover, there are no conditions or combination
2 of conditions that will reasonably assure either defendant's
3 appearance or the community's safety. No new information refutes
4 these findings, particularly considering: (1) the nature of the
5 charges; and (2) the prospect that defendant will serve a substantial
6 term of imprisonment upon conviction -- specifically, a five-year
7 mandatory minimum sentence for his distribution of child pornography
8 charges. See 18 U.S.C. § 2252A(a) (2) (A), (b) (1).

9 **II. PROCEDURAL HISTORY**

10 On April 19, 2023, defendant made his initial appearance on the
11 complaint in the Southern District of Ohio and the Court ordered him
12 detained. On May 30, 2023, defendant made his initial appearance in
13 the Central District of California. (Dkt. 13.) At the continued
14 detention hearing on June 6, 2023, this Court ordered that defendant
15 be detained pending trial. (Dkt. 22.)

16 In its Order, the Court found no conditions or combination of
17 conditions that would reasonably assure the safety of the community
18 and the appearance of the defendant as required. (Id. at 2.)
19 Specifically, this Court found that detention was warranted by:
20 (1) the lack of suitable residence and oversight (suitable staffing);
21 (2) mental health concerns; (3) defendant's possession of a loaded
22 firearm at the time of his arrest; (4) defendant's statements
23 regarding his suicidal ideations, access to firearms, and mental
24 health concerns; and (5) the allegations in the present charging
25 document. (See generally Dkt. 22.)

26 On September 1, 2023, defendant applied for reconsideration of
27 the order for pretrial detention. (Dkt. 27.)
28

1 **III. DEFENDANT SHOULD REMAIN DETAINED PENDING TRIAL**

2 Defendant's application for reconsideration of pretrial
3 detention should be denied because he fails to overcome the
4 presumption of detention applicable to his distribution of child
5 pornography charges; he remains a danger to the community; he remains
6 a risk of nonappearance; and -- against this record -- the
7 relinquishment of his weapons and sureties fail to warrant
8 reconsideration of the Court's well-considered detention order.

9 **A. Legal Standards for Pretrial Detention, Including the**
10 **Statutory Presumption in Favor of Detention**

11 A defendant must be detained pending trial where "no condition
12 or combination of conditions will reasonably assure the appearance of
13 the person as required and the safety of any other person and the
14 community." 18 U.S.C. § 3142(e)(1). Detention is thus appropriate
15 where a defendant is either a danger to the community or a flight
16 risk. United States v. Motamedi, 767 F.2d 1403, 1406 (9th Cir.
17 1985). In the typical case, "the government bears the burden of
18 showing by a preponderance of the evidence that the defendant poses a
19 flight risk, and by clear and convincing evidence that the defendant
20 poses a danger to the community." United States v. Gebro, 948 F.2d
21 1118, 1121 (9th Cir. 1991) (citing Motamedi, 767 F.2d at 1406-07).
22 But where, as here, there is probable cause to believe that defendant
23 committed an offense under 18 U.S.C. § 2252(A)(a)(2)(A), it is
24 "presumed that no condition or combination of conditions will
25 reasonably assure the appearance of the person as required and the
26 safety of the community." 18 U.S.C. § 3142(e)(3)(E).

27 Categorical grants or denials of bail, untethered from an
28 individualized determination, are impermissible. United States v.

1 Diaz-Hernandez, 943 F.3d 1196, 1199 (9th Cir. 2019). That is because
2 "the Bail Reform Act mandates an individualized evaluation guided by
3 the factors articulated in § 3142(g)." Id. Those factors are:

- 4 (1) the nature and circumstances of the offense charged;
- 5 (2) the weight of the evidence against the defendant;
- 6 (3) the defendant's character, physical and mental condition,
7 family and community ties, past conduct, history relating
to drug or alcohol abuse, criminal history; and
- 8 (4) the nature and seriousness of the danger to any person or
9 to the community that would be posed by the defendant's
release. 18 U.S.C. § 3142(g).

10 United States v. Winsor, 785 F.2d 755, 757 (9th Cir. 1986) (per
11 curiam) (citation omitted). Consideration of non-statutory factors
12 is disfavored. Diaz-Hernandez, 943 F.3d at 1199.

13 Under 18 U.S.C. § 3142(f)(2), a detention hearing may be
14 reopened "if the judicial officer finds that information exists that
15 was not known to the movant at the time of the hearing and that has a
16 material bearing on the issue whether there are conditions of release
17 that will reasonably assure the appearance of such person as required
18 and the safety of any other person and the community."

19 1. Defendant Is Charged with Serious Crimes, Including
20 Distribution of Child Pornography

21 Defendant distributed child pornography in a private Telegram
22 chatroom called, "The Playground Lives." The seriousness of
23 defendant's offenses is underscored by the penalties Congress has
24 imposed for these crimes: a mandatory minimum of five years'
25 incarceration for distribution of child pornography. The penalties
26 reflect the seriousness of the crimes and the danger defendant poses
27 to the community, as well as provide an incentive for defendant to
28 flee if released pending trial.

2. The Weight of the Evidence is Overwhelming

Defendant distributed the child sex abuse material ("CSAM") as described in detail in the complaint and indictment. (Dkt. 1 ¶ 19; Dkt. 7.) Indeed, defendant wrote about his conduct in his own journal entries. (Id. ¶ 2, Ex. A at USAO_000274 [REDACTED])

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] id. at 271 [REDACTED]

[REDACTED].) A preliminary review of defendant's digital device during the search showed apparent CSAM in his "recently deleted" photo album. (Dkt. 1 ¶ 22.)

Moreover, subpoena records show that defendant's Telegram account listed a Google Voice number that traced back to defendant. (Id. ¶ 14.)

3. Defendant's Characteristics Indicate that He is a Danger to the Community

While the defendant has no prior convictions, his own journal entries show how close he was to committing harm to himself. Defendant's agreement to give up his firearms and ammunition does not resolve the issue of the danger he poses to himself or to the community. Nowhere in defendant's filing shows that defendant cannot re-access weapons or other items that may be used to commit harm to himself or others. (See generally Dkt. 27.) Defendant's ability to lead a double life makes him un conducive to effective supervision, if released. M.D. is terrified that defendant will show up at her door if released. (Ng Decl. ¶ 4, Ex. C at 1.)

1 Courts frequently detain defendants accused of child
2 exploitation crimes, even when the defendant has little or no
3 criminal history. See United States v. Abad, 350 F.3d 793, 798-99
4 (8th Cir. 2003) (noting even though the defendant had no prior
5 criminal history, "the nature of the crime charged - sexual activity
6 with a minor" - weighs heavily against release); United States v.
7 Mercedes, 254 F.3d 433, 438 (2d Cir. 2001) (reversing the decision of
8 the district court to release the defendant even without a prior
9 criminal record where crime victim was a minor); United States v.
10 Gaw, 2013 WL 5979625, *3 (N.D. Cal. Nov. 8, 2013) (detaining employed
11 defendant with no criminal history because the evidence showed that
12 he received child pornography and used social media site to induce
13 minor to create child pornography).

14 For these reasons, there are no conditions of release that would
15 adequately protect the community here.

16 4. Defendant's Proposed Bond Does Not Mitigate the Risk
17 of Danger

18 In his application, defendant proposes a \$15,000 appearance bond
19 signed by his cousin, Jon Werner; a \$20,000 cash deposit¹; home
20 incarceration; no Internet-enabled devices; no firearms; among other
21 conditions. (Dkt. 27.)

22 But even significant bond resources do nothing to eliminate the
23 risk of danger to the community. See Rep. No. 225, 98th Congress,
24 1st Sess. 1983, 1984 U.S.C.A.N. 3182, 3198-99 (n.60) (Congress

25
26 ¹ M.D., defendant's estranged spouse, has indicated that
27 defendant has no liquid cash and that he should not be moving assets
28 from their savings account while their divorce proceedings are
pending. (Ng Decl. ¶ 4, Ex. C at 1.) She also noted that if
defendant were to access his retirement, he would be required to use
the Internet. (See id.)

1 finding that "a defendant who is a danger to the community remains
2 dangerous even if he has posted a substantial money bond").

3 Similarly, defendant's proposed monitoring conditions would not
4 prevent him from accessing other dangerous means to commit suicide or
5 accessing the Internet via devices belonging to other persons. In
6 light of the "myriad Internet-capable devices available, including
7 those that work with data plans rather than WiFi access, render[]
8 policing [defendant's] Internet use almost impossible." Cornish, 449
9 F. Supp. 3d at 686-87 (finding that bond conditions could not
10 sufficiently mitigate the danger defendant posed to the community,
11 and children in particular, if he was released); see also United
12 States v. Ritterhoff, 11-CR-1955-WJ, 2011 WL 13289664, *3-4 (D. N.M.
13 Aug. 8, 2011) (reversing the magistrate court's order setting
14 conditions of release and remanding defendant to custody, reasoning
15 that no conditions could reasonably assure defendant's appearance and
16 safety of the community where defendant attempted to entice minors on
17 the Internet because the ubiquity of Internet access made it
18 virtually impossible to prevent defendant from using it); United
19 States v. Reiner, 468 F. Supp. 2d 393, 398-99 (E.D.N.Y. 2006) ("In
20 this day and age, with devices such as cellphones, Blackberries, and
21 laptops, there are no conditions which can reasonably assure the
22 safety of the community under the particular circumstances of this
23 case if the defendant is released on bail."). Punitive felony
24 criminal statutes were not enough to deter defendant from
25 participating in distribution of child pornography in private
26 chatrooms and from counseling other chatroom members to evade law
27 enforcement detection; there is little reason to think that a
28 (largely unenforceable) bond condition will be more effective.

1 In sum, as to danger to the community, defendant has not
2 identified a change in circumstances that would warrant a change in
3 the Court's previous ruling.

4 5. Defendant Poses a Risk of Nonappearance

5 The Initial Pretrial Services Report also supports the Court's
6 finding that he poses a risk of nonappearance. After law enforcement
7 conducted a search at his home and seized his digital devices,²
8 defendant expressed suicidal ideations and instructed his spouse to
9 donate his belongings. (Dkt. 1 ¶ 25.) Therefore, days after the
10 search--when defendant knew that he was under investigation for
11 distributing child pornography--he grabbed his firearms and
12 ammunition, and drove from Los Angeles County to Ohio to visit his
13 parents' gravesite one last time. (Id. ¶ 25.) Defendant's journal
14 entries speak for themselves. (See Ng Decl. ¶ 2, Ex. A, at
15 USAO_000272-73, 275 (" [REDACTED]

16 [REDACTED]
17 [REDACTED]
18 [REDACTED]). Defendant poses a
19 continued risk of nonappearance if released into the community.

20 Additionally, in defendant's own Telegram communications,
21 defendant instructed other chatroom members how to evade law
22 enforcement detection (Dkt. 1 ¶ 19) and wrote in his journal about
23 needing to delete his Snap, Instagram, and Twitter accounts (Ng Decl.
24 ¶ 2, Ex. A, at USAO_000279). Defendant cannot now be entrusted to
25 comply with the Court's and Pretrial Service's orders.

26
27
28 ² As noted in the complaint, a preliminary review of defendant's
device showed what appeared to be CSAM in the "recently deleted"
photo album folder.

1 Defendant also faces a statutorily required, mandatory minimum
2 sentence of five years' imprisonment and a maximum penalty of twenty
3 years' imprisonment. The possibility of a lengthy prison sentence
4 may motivate defendant to flee. See United States v. Townsend, 897
5 F.2d 989, 994-95 (9th Cir. 1990) (holding that the district court
6 properly considered "penalties possible under the present indictment"
7 as providing an "incentive to consider flight," and noting that
8 electronic monitoring cannot assure prevention of flight).

9 Because of defendant's real potential for violent self-harm, his
10 instructions to other Telegram chat users on how to evade law
11 enforcement detection, and the significant prison length he faces,
12 defendant's risk of nonappearance cannot be mitigated.

13 **IV. CONCLUSION**

14 Nothing in defendant's application overcomes the statutory
15 presumption in favor of detention, and nothing justifies
16 reconsideration of the Court's prior, well-reasoned findings and
17 decision. For these reasons, the government respectfully requests
18 that this Court deny defendant's application for reconsideration of
19 its prior detention order.